

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HANNAH ENICH,)	
)	CASE NO. C13-0721-RSM-MAT
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	RE: SOCIAL SECURITY
CAROLYN W. COLVIN, Acting)	DISABILITY APPEAL
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Hannah Enich proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends that this matter be AFFIRMED.

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FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1974.¹ She completed three years of college and has been certified as an emergency medical technician, and has previously worked as an anesthesia technician, cashier, dishwasher, ambulance driver, firefighter, custodian, lawnmower, caregiver, and hydroblaster. (AR 173, 177, 179.)

Plaintiff filed an SSI application on October 2, 2009, alleging disability beginning May 11, 2009. (AR 153-56.) Plaintiff's application was denied at the initial level and on reconsideration. (AR 91-94, 97-99.) Plaintiff timely requested a hearing. (AR 106-08.)

On August 30, 2011, ALJ Stephanie Martz held a hearing, taking testimony from Plaintiff and a vocational expert (VE). (AR 37-80.) On September 20, 2011, the ALJ issued a decision finding Plaintiff not disabled. (AR 16-30.)

Plaintiff timely appealed. The Appeals Council denied Plaintiff's request for review on March 27, 2013 (AR 1-7), making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

JURISDICTION

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

DISCUSSION

The Commissioner follows a five-step sequential evaluation process for determining

¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
02 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had
03 not engaged in substantial gainful activity since the alleged onset date. (AR 18.) At step two,
04 it must be determined whether a claimant suffers from a severe impairment. The ALJ found
05 Plaintiff's lumbar spondylosis and degenerative disc disease with disc protrusions and bulges
06 and annular tear, asthma, obesity, post-traumatic stress disorder (PTSD), depression with
07 psychotic features, borderline personality disorder, and polysubstance abuse in remission
08 severe. (AR 18-21.) Step three asks whether a claimant's impairments meet or equal a listed
09 impairment. The ALJ found that Plaintiff's impairments did not meet or equal the criteria of a
10 listed impairment. (AR 21-24.)

11 If a claimant's impairments do not meet or equal a listing, the Commissioner must
12 assess residual functional capacity (RFC) and determine at step four whether the claimant has
13 demonstrated an inability to perform past relevant work. The ALJ found Plaintiff able to
14 perform less than the full range of light work as defined in 20 C.F.R. § 404.967(b); able to lift
15 and carry twenty pounds occasionally and ten pounds frequently; able to stand, walk, and sit
16 for about six out of eight hours (assuming the opportunity to stand for approximately fifteen
17 minutes after sitting for an hour); able to occasionally climb ladders, ropes or scaffolds, stoop,
18 kneel, crouch, and crawl. She should avoid concentrated exposure to extreme cold, fumes,
19 odors, gases, and poor ventilation. She can understand, remember, and carry out simple and
20 some detailed instructions. She can have occasional contact with co-workers, supervisors,
21 and the general public. (AR 24-29.)

22 With that assessment, the ALJ found Plaintiff unable to perform any past relevant

01 work. (AR 29.) If a claimant demonstrates an inability to perform past relevant work, the
02 burden shifts to the Commissioner to demonstrate at step five that the claimant retains the
03 capacity to make an adjustment to work that exists in significant levels in the national
04 economy. Considering the Medical-Vocational Guidelines and the VE's testimony, the ALJ
05 found Plaintiff capable of performing representative occupations including surveillance
06 system monitor and specific security guard positions. (AR 29-30.) Accordingly, the ALJ
07 found that Plaintiff was not disabled. (AR 30.)

08 This Court's review of the ALJ's decision is limited to whether the decision is in
09 accordance with the law and the findings supported by substantial evidence in the record as a
10 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
11 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
12 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
13 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
14 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
15 F.3d 947, 954 (9th Cir. 2002).

16 Plaintiff argues that sleep apnea should have been considered a severe impairment at
17 step two, in light of the record before the ALJ as well as the additional evidence submitted to
18 the Appeals Council, and that the ALJ erred in evaluating the medical evidence, specifically
19 the opinions of treating physician Deborah Oksenberg, M.D., and examining physicians
20 Anselm Parlatore, M.D., and Mark Heilbrunn, M.D. The Commissioner contends that the
21 ALJ's decision is supported by substantial evidence and free from legal error, and should be
22 affirmed.

Sleep Apnea

At step two, a claimant must make a threshold showing that his medically determinable impairments significantly limit his ability to perform basic work activities. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987) and 20 C.F.R. §§ 404.1520(c), 416.920(c). A severe mental or physical impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques, and established by medical evidence consisting of signs, symptoms, and laboratory findings, not only by the claimant's statement of symptoms. 20 C.F.R. §§ 404.1508, 416.908.

The ALJ found that Plaintiff's sleep apnea was not a medically determinable impairment for two reasons: (1) she only recently began complaining of sleep apnea-related symptoms, and she first reported on July 13, 2011, that she had no apneic episodes (AR 793), and reported on July 21, 2011, that her partner never witnessed any apneic episodes (AR 834), but then reported on August 10, 2011, that he did witness apneic episodes (AR 906-07); and (2) there is no objective testing confirming that Plaintiff has sleep apnea. (AR 20.)

Plaintiff argues that the ALJ erred in construing her description of symptoms as inconsistent, because she and her partner likely became more aware of her apneic symptoms as she further pursued treatment for sleep apnea. Dkt. 17 at 18-19. Furthermore, Plaintiff points to post-hearing evidence establishing a sleep apnea diagnosis. *See* Dkt. 17-1 at 4. Plaintiff contends that she submitted this evidence to the Appeals Council, but it was erroneously not mentioned in the Appeals Council's order denying review and was presumably rejected and returned. Dkt. 17 at 19-21. The Commissioner does not concede

01 that Plaintiff actually submitted the records to the Appeals Council (Dkt. 21 at 3), but argues
02 that even if she did submit them and they were rejected and returned, this Court should
03 consider whether the evidence justifies a “sentence six” remand under 42 U.S.C. § 405(g).

04 A sentence-six remand is appropriate to allow the Commissioner to assess “new” and
05 “material” evidence is submitted to the court for the first time. 42 U.S.C. § 405(g). Here, the
06 evidence attached to the Plaintiff’s opening brief is not “material,” because Plaintiff has not
07 shown a reasonable possibility that it would change the outcome of the ALJ’s determination.
08 *See Mayes v. Massanari*, 276 F.3d 453, 462 (9th Cir. 2001) (holding that evidence considered
09 under sentence six must be material to the matter in dispute and establish a “reasonable
10 possibility” that the outcome of the administrative hearing would be different (quoting *Booz v.*
11 *Sec’y of Health & Human Servs.*, 734 F.2d 1378, 1380-81 (9th Cir. 1983))). Plaintiff’s sleep
12 study results did not establish that she actually has sleep apnea; the specialist who reviewed
13 her sleep study results concluded that she has sleep-disordered breathing, which might be
14 obstructive sleep apnea or might be central apnea connected with her opiate medication
15 regime. Dkt. 17-1 at 4. Her physician recommended a course of action that was expected to
16 determine what type of sleep disorder Plaintiff was suffering from. *Id.* He also noted that by
17 September 8, 2011, Plaintiff no longer experienced insomnia nor somnolence, but “still feels
18 fatigued.” Dkt. 17-1 at 3. Subsequent medical records² from just a couple of weeks later
19 show that Plaintiff began using a CPAP machine and experienced “improved sleep and less
20 daytime somnolence,” and that she planned to follow up with her sleep specialist. (AR 928.)

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22 ² This record was submitted post-hearing, but was considered by the Appeals Council and
incorporated into the administrative record. (AR 2, 5.)

01 meet that standard. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996).

02 A. Dr. Oksenberg's Opinions

03 Plaintiff assigns error to the ALJ's rejection of Dr. Oksenberg's opinions that
 04 Plaintiff's physical impairments meet a Listing or limit her to sedentary work (AR 292-97,
 05 515, 886-87), and that her mental impairments meet a Listing (AR 885-92).³ The ALJ
 06 rejected Dr. Oksenberg's Listing opinions because (1) the opinion regarding nerve root
 07 compression was contradicted by other medical evidence showing that Plaintiff did not
 08 actually have any nerve root compression (AR 21-22); (2) the opinion regarding asthma was
 09 not supported by any evidence in the record (AR 22); and (3) the opinion regarding affective
 10 disorders was unexplained and inconsistent with her treatment notes (that, from the ALJ's
 11 perspective, "do not reflect an individual who is operating at the marked or more level in
 12 every realm of functioning") (AR 23-24). The ALJ rejected Dr. Oksenberg's November 2009
 13 and October 2010 opinions regarding Plaintiff's ability to perform sedentary work (AR 292-
 14 97, 515-17) as inconsistent with Plaintiff's "actual functioning" and inadequately explained.
 15 (AR 27.) The Court will address the disputed opinions in turn.

16 1. Nerve Root Compression

17 The ALJ rejected Dr. Oksenberg's opinion that Plaintiff met Listing 1.04 due to nerve
 18 root compression (AR 886-87) on the grounds that "there is no evidence of nerve root

19 ³ Buried in her section regarding Dr. Oksenberg's opinions, Plaintiff also argues that the ALJ
 20 erred in failing to address how her bipolar diagnosis (assessed by Lori Sherman, M.D. (AR 839))
 21 impacted her ability to maintain concentration, persistence, and pace. Dkt. 17 at 16. But Dr. Sherman
 22 never provided any opinion as to Plaintiff's abilities in those areas, and her diagnosis alone does not
 establish any particular functional limitations. Thus, Plaintiff has not established that the ALJ erred in
 failing to discuss the impact of Dr. Sherman's diagnosis. *See, e.g., Turner v. Comm'r of Social Sec.*
Admin., 613 F.3d 1217, 1223 (9th Cir. 2010) (ALJ not required to provide clear and convincing
 reasons to reject physician's statement when statement did not assess any limitations).

01 compression in the record,” and that orthopedist George Raj, M.D., “specifically reported
02 there was no evidence of nerve root compression and instead thought the generation of
03 [Plaintiff’s] pain complaints was annular tears.” (AR 22 (citing AR 337-52).) The
04 Commissioner concedes that the ALJ mistakenly attributed the contradictory medical
05 evidence to Dr. Raj, rather than Tbuy Trang Tran-Wong, ARNP, but emphasizes that the cited
06 medical evidence supports the ALJ’s overall conclusion that Dr. Oksenberg’s opinion
07 regarding nerve root compression is not supported by the record. Dkt. 21 at 8. The record
08 shows that Plaintiff’s November 2009 MRI did not reveal any “significant signs” of “nerve
09 root impingement.” (AR 343.) Whether or not “nerve root impingement” is equivalent to
10 “nerve root compression” (as suggested by the ALJ’s decision), however, the record
11 nonetheless does not reference any evidence of “nerve root compression” and thus Dr.
12 Oksenberg’s opinion that Plaintiff had such compression is not supported by the record. (AR
13 886.) The ALJ did not err in rejecting this opinion as unsupported by the record.

14 2. Asthma

15 Plaintiff does not challenge the ALJ’s rejection of Dr. Oksenberg’s opinion regarding
16 asthma, and thus the Court need not address it here.

17 3. Affective Disorders

18 Plaintiff argues that the ALJ erred in rejecting Dr. Oksenberg’s opinion that her
19 depression met the listing requirements for affective disorders, because even if the
20 interrogatory answer itself was unexplained, her treatment notes support her opinion. Dkt. 17
21 at 11. Plaintiff also argues that the ALJ erred in interpreting Dr. Oksenberg’s treatment notes
22 as inconsistent with her opinions regarding “marked” limitations because an impairment is

01 “marked” if it “seriously” interferes with a particular area of functioning, and Dr. Oksenberg’s
02 treatment notes (and other treatment notes from other providers) document serious
03 impairment (as documented by, *inter alia*, Global Assessment of Functioning scores of 45 and
04 48). Dkt. 17 at 10-17.

05 Plaintiff’s argument is unpersuasive. Dr. Oksenberg’s treatment notes document
06 Plaintiff’s depression diagnosis and treatment, but do not contain clinical notes regarding the
07 effect of Plaintiff’s depression on her functioning. (AR 381-26, 792-832, 927-50.) The ALJ
08 reasonably construed Dr. Oksenberg’s treatment notes as inconsistent with her opinions
09 regarding Plaintiff’s marked functional limitations, because her notes do not discuss
10 functional limitations at all. Although Plaintiff directs the Court’s attention to the treatment
11 notes of other providers, as evidence that would support Dr. Oksenberg’s opinions, Plaintiff
12 has not cited any treatment notes explicitly addressing functional limitations caused by
13 Plaintiff’s depression. Thus, she has not established that the ALJ’s reasons for rejecting Dr.
14 Oksenberg’s opinion regarding affective disorders are insufficient.

15 4. Opinions Regarding Sedentary Work

16 The ALJ found that Dr. Oksenberg’s opinions regarding Plaintiff’s physical
17 limitations were inconsistent with her activities — including painting (AR 194, 202, 823)
18 gardening (AR 48-49, 299), helping her mother pave a patio and landscape her driveway (AR
19 338), and fly-fishing on a weeklong vacation for possibly a couple of hours at a time (AR 62-
20 63) — and Plaintiff argues that this finding is in error because there is no evidence that
21 Plaintiff performed those activities in a way that contradicts her testimony regarding her
22 limitations. Dkt. 22 at 4. But the ALJ is permitted to draw reasonable inferences from the

01 record, and Plaintiff has not shown that the ALJ's unreasonably inferred that Plaintiff's self-
02 reported activities were inconsistent with her testimony that she cannot stand for more than a
03 few minutes at a time, has difficulties going down stairs and crouching, and often has trouble
04 walking more than 10-20 minutes at a time. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1038
05 (9th Cir. 2008) ("The Court will uphold the ALJ's findings will be upheld 'if supported by
06 inferences reasonably drawn from the record....'" (quoting *Batson v. Comm'r of Social Sec.*
07 *Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004))). Although Plaintiff posits that her activities
08 could have been performed in a way that would still be consistent with her testimony (*e.g.*,
09 Dkt. 22 at 7), she does not establish that the ALJ's interpretation is unreasonable.
10 Accordingly, the ALJ's inferences regarding Plaintiff's activities should be upheld.

11 B. Dr. Parlatore's Opinions

12 Dr. Parlatore provided numerous psychiatric opinions between November 2009 and
13 August 2011, and the ALJ gave little weight to them because (1) Dr. Parlatore failed to
14 explain why he believed Plaintiff's condition had deteriorated over time, (2) Dr. Parlatore did
15 not "explain the bases for any of his opinions or assessments," and (3) Dr. Parlatore's
16 opinions were inconsistent with Plaintiff's daily activities. (AR 28.) Plaintiff argues that Dr.
17 Parlatore actually did explain his opinions (when all of the evaluations of record are
18 considered), and that the ALJ erred in failing to identify specific inconsistent daily activities.

19 The ALJ also gave no weight to Dr. Parlatore's July 2011 and August 2011
20 interrogatories, which indicate that Plaintiff meets the criteria of several listed impairments,
21 including PTSD, affective disorders, personality disorders, and organic mental disorder (due
22 to sleep apnea). (AR 23 (citing AR 724-30, 894-98).) The ALJ relied on two of the same

01 reasons listed above to reject Dr. Parlatore's interrogatories — lack of explanation, and
02 inconsistency with Plaintiff's daily activities — and further noted that Dr. Parlatore's opinion
03 about the limitations caused by Plaintiff's sleep apnea "are based solely on the report of
04 symptoms and limitations provided by the claimant," which is not credible due to the
05 inconsistencies in her description of apneic symptoms. (AR 23.) Plaintiff specifically
06 challenges⁴ the ALJ's rejection of Dr. Parlatore's interrogatory evidence, and the Court will
07 address in turn each of the reasons the ALJ provided for rejecting that evidence.

08 1. Lack of explanation

09 Dr. Parlatore's interrogatory opinions that Plaintiff met various listing requirements
10 were expressed in checkbox form. (AR 724-30, 894-902.) The ALJ asserted that Dr.
11 Parlatore did not explain "the basis for his findings of limitations in this form letter, or in the
12 few evaluations [AR 286-91, 353-57, 531-36] he performed of the claimant in order for her to
13 continue to receive State assistance benefits." (AR 23.) Plaintiff contends that this finding is
14 inaccurate, because when the interrogatory opinions are read in conjunction with the form
15 evaluations, Dr. Parlatore's "observations, findings, and clinical basis for his diagnoses and
16 opinions" can be ascertained. Dkt. 23 at 17.

17 Plaintiff's point is not well-taken, because Dr. Parlatore did not support his opinions
18 with observations even in the DSHS form evaluations. *See, e.g.*, AR 289, 534, 901. Although

19 4 Plaintiff also disputes (Dkt. 17 at 23-24) the validity of one of the reasons the ALJ provided
20 for discounting Dr. Parlatore's August 2011 form evaluation: the lack of explanation as to why "he felt
21 [Plaintiff's] limitations had worsened." (AR 28.) As noted by the ALJ, Dr. Parlatore indicated in
22 August 2011 that Plaintiff had numerous cognitive limitations not noted on previous evaluations. (AR
901.) Plaintiff argues that this change can be attributed to a new sleep apnea diagnosis, but Dr.
Parlatore did not so indicate on the evaluation and instead stated that Plaintiff "had no clinically
relevant cognitive deficits." (AR 902.) Thus, the ALJ's reasoning regarding the August 2011 form
evaluation is legitimate.

01 he indicated in his August 2011 interrogatories that his opinion regarding the effects of
02 Plaintiff's sleep apnea was based on his clinical interview of Plaintiff and her significant
03 other, wherein they described Plaintiff's apneic symptoms, Dr. Parlatore nonetheless did not
04 explain how that interview or those symptoms support his opinions regarding the existence of
05 an organic mental disorder. (AR 896.) For example, although Dr. Parlatore indicated that
06 Plaintiff experiences repeated episodes of deterioration or decompensation, each of extended
07 duration, there is no evidence of such episodes in the record and Dr. Parlatore does not
08 mention any in his brief summary of his clinical interview regarding sleep apnea. (AR 23,
09 895.) Thus, Plaintiff has not shown that the ALJ erred in finding that Dr. Parlatore's
10 interrogatory opinions were unexplained, and this is a legitimate reason to discount a medical
11 opinion. *See, e.g., Batson*, 359 F.3d at 1195 (holding that an ALJ may discount a medical
12 opinion when it is "in the form of a checklist, did not have supportive objective evidence, was
13 contradicted by other statements and assessments of [the claimant's condition], and was based
14 on [the claimant's] subjective descriptions of pain[,] as well as when that opinion is
15 "conclusory, brief, and unsupported by the record as a whole . . . or by objective medical
16 findings").

17 2. Daily Activities

18 The ALJ indicated that Dr. Parlatore's opinions regarding Plaintiff's listing-level
19 impairments were inconsistent with her level of activities, specifically her ability to
20 participate in hobbies, attend AA meetings regularly, and take improvisational comedy
21 classes. (AR 23.) Plaintiff argues that these activities are not actually inconsistent with Dr.
22 Parlatore's opinions, but the Court disagrees. Dr. Parlatore indicated that Plaintiff had a

01 “marked” restriction in activities of daily living (AR 724-25, 895, 897), and the ALJ
02 reasonably found this opinion to be inconsistent with Plaintiff’s self-reported activities
03 (summarized at AR 22-23 (the ALJ’s finding that Plaintiff’s activities of daily living were
04 only mildly restricted)). Thus, the ALJ sufficiently explained why she found Plaintiff’s
05 activities to be less restricted than Dr. Parlatore believed, and Plaintiff has not shown that this
06 finding is unreasonable.

07 3. Credibility Concerns

08 The ALJ noted that Dr. Parlatore’s opinion regarding the effects of sleep apnea was
09 based on Plaintiff’s self-reported apneic symptoms, which the ALJ found not credible due to
10 inconsistencies in reporting over time. As discussed previously, Plaintiff posits that the
11 differences in her self-reported symptoms should be attributed to increasing awareness of
12 sleep apnea over time, rather than construed against her credibility. Dkt. 17 at 22. Plaintiff’s
13 explanation may be reasonable, but she has not established that the ALJ’s interpretation was
14 unreasonable. *See Morgan v. Comm’r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th Cir.
15 1999) (“Where the evidence is susceptible to more than one rational interpretation, it is the
16 ALJ’s conclusion that must be upheld.”). Moreover, even if the ALJ erred in construing
17 Plaintiff’s description of apneic symptoms against her credibility, the ALJ provided additional
18 legitimate reasons to discount Dr. Parlatore’s opinions regarding the effect of sleep apnea, and
19 thus any error is harmless.

20 C. Dr. Heilbrunn’s Opinions

21 Dr. Heilbrunn performed a consultative evaluation of Plaintiff in January 2010 and
22 opined that Plaintiff could stand and/or walk up to five hours (15 minutes at one time) out of

01 an eight-hour workday, and sit up to 4-5 hours (20-30 minutes at one time) out of an eight-
02 hour workday, and lift ten pounds on the left and 5-10 pounds on the right. (AR 330-36.)
03 The ALJ gave only partial weight to this opinion because Dr. Heilbrunn did not review any
04 additional medical records before rendering his opinion, and because “his limitations
05 regarding [Plaintiff’s] ability to sit and stand are inconsistent with his own objective findings
06 as well as with [Plaintiff’s] reported activities of daily living throughout the record.” (AR
07 27.)

08 Plaintiff argues that the ALJ’s reasoning is not sufficiently specific, because she did
09 not indicate which of “his own objective findings” and her daily activities were inconsistent
10 with Dr. Heilbrunn’s conclusions. Dkt. 17 at 24. The Commissioner notes that the ALJ
11 correctly indicated that Dr. Heilbrunn did not review Plaintiff’s longitudinal record (AR 330),
12 but only reviewed one Administration form containing her self-reported symptoms (AR 171-
13 78). This is a specific and legitimate reason to discount Dr. Heilbrunn’s opinion, because an
14 ALJ properly considers the extent of a provider’s familiarity with a claimant’s record when
15 assessing the provider’s opinion. *See* 20 C.F.R. § 416.927(c)(6).

16 The ALJ’s decision in its entirety also identifies daily activities that are inconsistent
17 with Dr. Heilbrunn’s opinion regarding Plaintiff’s restricted ability to sit and stand. (AR 25-
18 26 (describing Plaintiff’s ability to pave/landscape, paint, sculpt, play the piano and guitar,
19 garden, watch television, read, and fly-fish for a couple of hours per day).) Although the ALJ
20 did not explicitly reiterate her recitation of these activities when she addressed Dr.
21 Heilbrunn’s opinion, the Court can infer that the ALJ referred to these activities previously
22 described. *See Magallanes v. Bowen*, 881 F.2d 747, 755 (9th Cir. 1989) (“As a reviewing

01 court, we are not deprived of our faculties for drawing specific and legitimate inferences from
02 the ALJ's opinion."). Accordingly, because the ALJ identified specific and legitimate
03 reasons⁵ to discount Dr. Heilbrunn's opinion, Plaintiff has not shown that the ALJ erred in
04 assessing his opinion.

05 **CONCLUSION**

06 For the reasons set forth above, this matter should be AFFIRMED.

07 DATED this 20th day of December, 2013.

08 

09 Mary Alice Theiler
10 Chief United States Magistrate Judge
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20 ⁵ Plaintiff argues that the ALJ erred in crediting the State agency opinions "because the
21 opinion of a non-examining doctor cannot alone constitute substantial evidence that warrants the
22 rejection of the opinion of either an examining or treating physician" (Dkt. 17 at 24), but the ALJ did
not cite the State agency opinions as grounds for discounting any medical opinion. (AR 26-29.) Thus,
Plaintiff's argument regarding the State agency opinions, which is folded into her argument regarding
Dr. Heilbrunn (Dkt. 17 at 1, 24), is misplaced.